

General Information. Application of sales factor.

November 13, 1998

Dear:

This is in response to your letter dated July 14, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

I am a California CPA that has a California client that is opening a sales office in Chicago. My question concerns recognition of sales revenue. The salesperson transferred to the Chicago office was in the California office and, in being transferred, brought along his customers that he serviced in California. Since the Chicago office is new, there are no sales made in Chicago as yet. My question is now that the salesperson is in Illinois, do the salesperson's customers that were obtained while in California now become Illinois sales or are they still California source customers?

In computing the sales apportionment factor for Illinois, do I use the new sales made by the salesperson in Chicago or do I use the customers that the salesperson had in California to arrive at the percentage?

Do we go by the location where the sale was made or by the location of who services the customers?

#### **Response**

If your California client has not been subject to jurisdiction in Illinois for taxation purposes, then it is possible that a permanent employee stationed in Chicago would create nexus and bring it under the Illinois Income tax Act (IITA) for the first time. The question of nexus is a highly fact-dependent issue, however, and a much more detailed description of your client's situation would be necessary before even general statements could be made about it.

The tenor of your correspondence, with its focus on the sales factor, requires us to presume that your client has nexus with Illinois and will continue to have such nexus after the transfer to Chicago. In other words, I assume that the move of the salesperson is not the sole change of activity that will determine nexus for this state's jurisdiction to tax. The only issue to be discussed here, then, is the assignment of sales to the Illinois sales factor for purposes of apportionment.

IITA §304(a)(3) asserts, in part, the following:

(B) Sales of tangible personal property are in this State if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this State and either the purchaser is the United States government or the person is not taxable in the state of the purchaser; . . .

(C) Sales, other than sales of tangible personal property, are in this State if:

(i) The income-producing activity is performed in this State; or

(ii) The income-producing activity is performed both within and without this State and a greater proportion of the income producing activity is performed within this State than without this State, based on performance costs.

These are the core provisions of the IITA that concern assignment of sales to the Illinois sales factor. In response to your letter, we can state that it does not appear that the opening of a sales office in Chicago, by itself, has any relevance to any of these core provisions. More important to the question are the respective states in which the seller and purchaser are located and the type of product your client sells, whether tangible or intangible. However, your correspondence fails to state facts that would enable us to pursue a deeper analysis.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Il. Admin. Code Section 1200.110(b).

Sincerely,

Kent R. Steinkamp  
Staff Attorney -- Income Tax

Enc.

KS:ks